

BEFORE THE
DIVISION OF MEDICAL QUALITY
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation)
Against:)

JAMES S. NOVICK, M.D.)
Certificate No. C-36874)

No. 05-96-59454

Respondent.)
_____)

DECISION

The attached Stipulated Settlement and Decision is hereby adopted by the Division of Medical Quality as its Decision in the above-entitled matter.

This Decision shall become effective on April 2, 1998.

IT IS SO ORDERED March 3, 1998.

By: Carole Hurvitz
CAROLE HURVITZ, M.D.
Chair - Panel B
Division of Medical Quality

DANIEL E. LUNGREN, Attorney General
of the State of California
GLORIA A. BARRIOS,
Deputy Attorney General, State Bar No. 94811
California Department of Justice
300 South Spring Street
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Attorneys for Complainant

**BEFORE THE
DIVISION OF MEDICAL QUALITY
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation)	Case No. 05-96-59454
Against:)	
)	OAH No. L-1997120098
JAMES S. NOVICK, M.D.,)	<u>STIPULATED SETTLEMENT</u>
1750 Canada Blvd.)	<u>AND DECISION</u>
Glendale, California 91208)	
)	
Physician and Surgeon Certificate)	
No. C-36874)	
)	
Respondent.)	

In the interest of a prompt and speedy settlement of this matter, consistent with the public interest and the responsibility of the Division of Medical Quality, Medical Board of California Department of Consumer Affairs ("Division") the parties hereby agree to the following Stipulated Settlement and Decision which will be submitted to the Division for its approval and adoption as the final disposition of the Accusation.

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1 **PARTIES**

2 1. Complainant Ron Joseph is the Executive Director
3 of the Medical Board of California who brought this action solely
4 in his official capacity and is represented in this matter by
5 Daniel E. Lungren, Attorney General of the State of California,
6 by Gloria A. Barrios, Deputy Attorney General.

7 2. Respondent James S. Novick, M.D., ("respondent") is
8 representing himself.

9 3. At all times relevant herein, respondent has been
10 licensed by the Medical Board of California under Physician and
11 Surgeon Certificate No. C-36874.

12 **JURISDICTION**

13 4. Accusation No. 05-96-59454, was filed before the
14 Division and is currently pending against respondent. The
15 Accusation, together with all other statutorily required
16 documents, was duly served on the respondent on November 24,
17 1997, and respondent timely filed his Notice of Defense
18 (contesting the Accusation). A copy of Accusation No.
19 05-96-59454 is attached as an Exhibit and incorporated herein by
20 reference.

21 5. The Accusation alleges, among other things, that
22 respondent has subjected his Physician and Surgeon Certificate to
23 discipline for unprofessional conduct based on the following
24 violations:

25 A. Section 2234, subd. (c) of the Business and
26 Professions Code (hereinafter "Code"), for repeated
27 negligence referring to the care and management of

1 patient R.B.; section 2236, conviction which relates to
2 the qualifications, functions or duties of a
3 physician; and section 2239, the use of alcohol in a
4 manner which would be dangerous to himself.

5 **ADVISEMENT AND WAIVERS**

6 6. Respondent understands the nature of the charges
7 alleged in the Accusation and the effects of this stipulation.

8 7. Respondent understands that the charges and
9 allegations in the Accusation, if proven at a hearing, constitute
10 cause for imposing discipline upon his Physician and Surgeon
11 Certificate. Respondent is fully aware of his legal rights and
12 that, but for this Stipulation, he would be entitled: 1) to a
13 hearing on the charges and allegations in the Accusation; 2) to
14 be represented by counsel, at his own expense, in all proceedings
15 in this matter; 3) to confront and cross-examine the witnesses
16 against him; 4) to present evidence on his own behalf and to the
17 issuance of subpoenas to compel the attendance of witnesses and
18 the production of documents; 5) to reconsideration and appeal of
19 an adverse decision; and 6) all other rights accorded pursuant to
20 the California Administrative Procedure Act and other applicable
21 laws.

22 8. With these rights in mind, respondent freely,
23 voluntarily, knowingly and intelligently waives and gives up each
24 and every right set forth above.

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CULPABILITY

9. Respondent admits the truth of each and every allegation paragraphs 5, A-E, 7 and 8 in Accusation No. 05-96-59454.

10. Respondent agrees that his license is subject to discipline pursuant to section 2227 of the Code, as set forth above in paragraph 9. Respondent agrees to be bound by the Division's imposition of discipline as set forth in the Order below.

CONTINGENCY

11. This stipulation shall be subject to the approval of the Division. Respondent understands and agrees that Board staff and counsel for complainant may communicate directly with the Division regarding this stipulation and settlement, without notice to or participation by respondent. If the Division fails to adopt this stipulation as its Order, the stipulation shall be of no force or effect, it shall be inadmissible in any legal action between the parties, and the Division shall not be disqualified from further action in this matter by virtue of its consideration of this stipulation.

12. In consideration of the foregoing admissions and stipulations, the parties agree that the Division shall, without further notice or formal proceeding, issue and enter the following Disciplinary Order:

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1 **DISCIPLINARY ORDER**

2 **IT IS HEREBY ORDERED** that Physician and Surgeon
3 Certificate No. C-36874 issued to James S. Novick, M.D., is
4 revoked. However, the revocation is stayed and respondent is
5 placed on probation for 3 years on the following terms and
6 conditions.

7
8 **1. BIOLOGICAL FLUID TESTING**

9 Respondent shall immediately submit to biological fluid
10 testing, at respondent's cost, upon the request of the Division
11 or its designee.

12 **2. DIVERSION PROGRAM**

13 Within 30 days from the effective date of this
14 decision, respondent shall enroll and participate in the
15 Division's Diversion Program for evaluation purposes only unless
16 the Division determines that further treatment and rehabilitation
17 is necessary. Quitting the program without permission or being
18 expelled for cause shall constitute a violation of probation by
19 respondent.

20 **3. EDUCATION COURSE**

21 Within 90 days from the effective date of this
22 decision, and on an annual basis thereafter, respondent shall
23 submit to the Division or its designee for its prior approval an
24 educational program or course to be designated by the Division,
25 which shall not be less than 40 hours per year, for each year of
26 probation. This program shall be in addition to the Continuing
27 Medical Education requirements for re-licensure. Following the

1 completion of each course, the Division or its designee may
2 administer an examination to test respondent's knowledge of the
3 course. Respondent shall provide proof of attendance for 65
4 hours of continuing medical education of which 40 hours were in
5 satisfaction of this condition and were approved in advance by
6 the Division or its designee.

7 **4. CLINICAL TRAINING PROGRAM**

8 Within 90 days from the effective date of this
9 decision, respondent shall submit to the Division or its designee
10 for its prior approval, a clinical training or educational
11 program, PACE. The exact number of hours and specific content of
12 the program shall be determined by the Division or its designee.
13 Respondent shall successfully complete the training program and
14 may be required to pass an examination administered by the
15 Division or its designee related to the program's contents.

16 Failure to pass the oral clinical examination within
17 18 months after the effective date of this decision shall
18 constitute a violation of probation. The respondent shall pay
19 the costs of all examinations.

20 If respondent fails to pass the first examination,
21 respondent shall be suspended from the practice of medicine until
22 a repeat examination has been successfully passed, as evidenced
23 by written notice to respondent from the Division or its
24 designee.

25 **5. OBEY ALL LAWS**

26 Respondent shall obey all federal, state and local
27 laws, all rules governing the practice of medicine in California,

1 and remain in full compliance with any court ordered criminal
2 probation, payments and other orders.

3 **6. QUARTERLY REPORTS**

4 Respondent shall submit quarterly declarations under
5 penalty of perjury on forms provided by the Division, stating
6 whether there has been compliance with all the conditions of
7 probation.

8 **7. PROBATION SURVEILLANCE PROGRAM COMPLIANCE**

9 Respondent shall comply with the Division's probation
10 surveillance program. Respondent shall, at all times, keep the
11 Division informed of his or her addresses of business and
12 residence which shall both serve as addresses of record. Changes
13 of such addresses shall be immediately communicated in writing to
14 the Division. Under no circumstances shall a post office box
15 serve as an address of record.

16 Respondent shall also immediately inform the Division,
17 in writing, of any travel to any areas outside the jurisdiction
18 of California which lasts, or is contemplated to last, more than
19 thirty (30) days.

20 **8. INTERVIEW WITH THE DIVISION, ITS DESIGNEE OR ITS**
21 **DESIGNATED PHYSICIAN(S)**

22 Respondent shall appear in person for interviews with
23 the Division, its designee or its designated physician(s) upon
24 request at various intervals and with reasonable notice.

25 **9. TOLLING FOR OUT-OF-STATE PRACTICE, RESIDENCE OR**
26 **IN-STATE NON-PRACTICE**

27 In the event respondent should leave California to
reside or to practice outside the State or for any reason should

1 respondent stop practicing medicine in California, respondent
2 shall notify the Division or its designee in writing within ten
3 days of the dates of departure and return or the dates of non-
4 practice within California. Non-practice is defined as any
5 period of time exceeding thirty days in which respondent is not
6 engaging in any activities defined in Sections 2051 and 2052 of
7 the Business and Professions Code. All time spent in an
8 intensive training program approved by the Division or its
9 designee shall be considered as time spent in the practice of
10 medicine. Periods of temporary or permanent residence or
11 practice outside California or of non-practice within California,
12 as defined in this condition, will not apply to the reduction of
13 the probationary period.

14 **10. COMPLETION OF PROBATION**

15 Upon successful completion of probation, respondent's
16 certificate shall be fully restored.

17 **11. VIOLATION OF PROBATION**

18 If respondent violates probation in any respect, the
19 Division, after giving respondent notice and the opportunity to
20 be heard, may revoke probation and carry out the disciplinary
21 order that was stayed. If an accusation or petition to revoke
22 probation is filed against respondent during probation, the
23 Division shall have continuing jurisdiction until the matter is
24 final, and the period of probation shall be extended until the
25 matter is final.

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1 12. **COST RECOVERY**

2 The respondent is hereby ordered to reimburse the
3 Division the amount of \$2,000.00 within one year from the
4 effective date of this decision for its investigative and
5 prosecution costs. Failure to reimburse the Division's cost of
6 its investigation and prosecution shall constitute a violation of
7 the probation order, unless the Division agrees in writing to
8 payment by an installment plan because of financial hardship.
9 The filing of bankruptcy by the respondent shall not relieve the
10 respondent of his responsibility to reimburse the Division for
11 its investigative and prosecution costs.

12 13. **LICENSE SURRENDER**

13 Following the effective date of this decision, if
14 respondent ceases practicing due to retirement, health reasons or
15 is otherwise unable to satisfy the terms and conditions of
16 probation, respondent may voluntarily tender his certificate to
17 the Board. The Division reserves the right to evaluate the
18 respondent's request and to exercise its discretion whether to
19 grant the request, or to take any other action deemed appropriate
20 and reasonable under the circumstances. Upon formal acceptance
21 of the tendered license, respondent will no longer be subject to
22 terms and conditions of probation.

23
24 **ACCEPTANCE**

25 I have carefully read the above Stipulated Settlement
26 and Decision. I understand the effect this stipulation will have
27 on my Physician and Surgeon Certificate and agree to be bound

1 thereby. I enter into this Stipulated Settlement and Decision
2 knowingly, voluntarily, freely and intelligently.

3 DATED: 1/27/98.

4

5

James S. Novick, M.D.
James S. Novick, M.D.,
Respondent

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7

ENDORSEMENT

8 The foregoing Stipulated Settlement and Decision is
9 hereby respectfully submitted for consideration of the Division
10 of Medical Quality, Medical Board of California Department of
11 Consumer Affairs.

12

DATED: 2/2/98.

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DANIEL E. LUNGREN, Attorney General
of the State of California

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Gloria A. Barrios
Gloria A. Barrios
Deputy Attorney General

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Attorneys for Complainant

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FILED
STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
SACRAMENTO November 6 19 97
BY Lamela S. Mosher ANALYST

BEFORE THE
DIVISION OF MEDICAL QUALITY
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation) Case No. 05-96-59454
Against:)

JAMES S. NOVICK, M.D.) ACCUSATION
1750 Canada Boulevard)
Glendale CA 91208)
Physician and Surgeon's Certificate)
No. C36874,)
Respondent.)

The Complainant alleges:

PARTIES

1. Ron Joseph ("Complainant") brings this accusation
solely in his official capacity as the Executive Director of the
Medical Board of California (hereinafter the "Board").

2. On or about December 29, 1975, Physician and
Surgeon's Certificate No. C36874 was issued by the Board to James
S. Novick, M.D. (hereinafter "respondent"). At all times relevant

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1 to the charges brought herein, this license has been in full force
2 and effect. Unless renewed, it will expire on April 30, 1998.

3 JURISDICTION

4 3. This accusation is brought before the Division of
5 Medical Quality of the Medical Board of California, Department of
6 Consumer Affairs (hereinafter the "Division"), under the authority
7 of the following sections of the Business and Professions Code
8 (hereinafter "Code"):

9 A. Section 2227 of the Code provides that a
10 licensee who is found guilty under the Medical Practice Act
11 may have his license revoked, be suspended for a period not to
12 exceed one year, be placed on probation and required to pay
13 the costs of probation monitoring, or have such other action
14 taken in relation to discipline as the Division deems proper.

15 B. Section 2234 of the Code provides that
16 unprofessional conduct includes, but is not limited to, the
17 following:

18 "(a) Violating or attempting to violate, directly or
19 indirectly, or assisting in or abetting the violation of,
20 or conspiring to violate, any provision of this chapter.

21 "(b) Gross negligence.

22 "(c) Repeated negligent acts.

23 "(d) Incompetence.

24 "(e) The commission of any act involving dishonesty
25 or corruption which is substantially related to the
26 qualifications, functions, or duties of a physician and
27 surgeon.

1 "(f) Any action or conduct which would have
2 warranted the denial of a certificate.

3 C. Section 2236 of the Code provides:

4 "(a) The conviction of any offense substantially
5 related to the qualifications, functions, or duties of a
6 physician and surgeon constitutes unprofessional conduct
7 within the meaning of this chapter. The record of
8 conviction shall be conclusive evidence only of the fact
9 that the conviction occurred.

10 "(b) The district attorney, city attorney, or other
11 prosecuting agency shall notify the Division of Medical
12 Quality of the pendency of an action against a licensee
13 charging a felony or misdemeanor immediately upon
14 obtaining information that the defendant is a licensee.
15 The notice shall identify the licensee and described the
16 crimes charged and the facts alleged. The prosecuting
17 agency shall also notify the clerk of the court in which
18 the action is pending that the defendant is a licensee,
19 and the clerk shall record prominently in the file that
20 the defendant holds a license as a physician and surgeon.

21 "(c) The clerk of the court in which a licensee is
22 convicted of a crime shall, within 48 hours after the
23 conviction, transmit a certified copy of the record of
24 conviction to the board. The division may inquire into
25 the circumstances surrounding the commission of a crime
26 in order to fix the degree of discipline or to determine
27 if the conviction is of an offense substantially related

1 to the qualifications, functions, or duties of a
2 physician and surgeon.

3 "(d) A plea or verdict of guilty or a conviction
4 after a plea of nolo contendere is deemed to be a
5 conviction within the meaning of this section and Section
6 2236.1. The record of conviction shall be conclusive
7 evidence of the fact that the conviction occurred."

8 D. Section 2239 of the Code provides:

9 "(a) The use or prescribing for or administering to
10 himself or herself, of any controlled substance; or the
11 use of any of the dangerous drugs specified in Section
12 4211, or of alcoholic beverages, to the extent, or in
13 such a manner as to be dangerous or injurious to the
14 licensee, or to any other person or to the public, or to
15 the extent that such use impairs the ability of the
16 licensee to practice medicine safely or more than one
17 misdemeanor or any felony involving the use, consumption,
18 or self-administration of any of the substances referred
19 to in this section, or any combination thereof,
20 constitutes unprofessional conduct. The record of the
21 conviction is conclusive evidence of such unprofessional
22 conduct.

23 ". . . ."

24 E. Section 16.01 of the 1997/199 Budget Act of the
25 State of California provides, in pertinent part, that:

26 "(a) No funds appropriated by this act may be
27 expended to pay any Medi-Cal claim for any service

1 performed by a physician while that physician's
2 license is under suspension or revocation due to
3 disciplinary action of the Medical Board of
4 California.

5 "(b) No funds appropriated by this act may be
6 expended to pay any Medi-Cal claim for any surgical
7 services or other invasive procedure performed on
8 any Medi-Cal beneficiary by a physician if that
9 physician has been placed on probation due to a
10 disciplinary action of the Medical Board of
11 California related to the performance of that
12 specific service or procedure on any patient,
13 except in any case where the board makes a
14 determination during its disciplinary process that
15 there exist compelling circumstances that warrant
16 continued Medi-Cal reimbursement during the
17 probationary period.

18 F. Section 125.3 of the Code provides:

19 "(a) Except as otherwise provided by law, in any
20 order issued in resolution of a disciplinary proceeding
21 before any board within the department or before the
22 Osteopathic Medical Board, the board may request the
23 administrative law judge to direct a licentiate found to
24 have committed a violation or violations of the licensing
25 act to pay a sum not to exceed the reasonable costs of
26 the investigation and enforcement of the case.

27 ". . .

1 "(c) A certified copy of the actual costs, or a
2 good faith estimate of costs where actual costs are not
3 available, signed by the entity bringing the proceeding
4 or its designated representative shall be prima facie
5 evidence of reasonable costs of investigation and
6 prosecution of the case. The costs shall include the
7 amount of investigative and enforcement costs up to the
8 date of the hearing, including, but not limited to,
9 charges imposed by the Attorney General.

10 ". . . ."

11 **FIRST CAUSE FOR DISCIPLINE**

12 (Gross Negligence)

13 4. Respondent James S. Novick, M.D. is subject to
14 disciplinary action under section 2234, subdivision (b), of the
15 Code in that respondent was grossly negligent in the care,
16 treatment and management of patient R.B.^{1/} The circumstances are
17 as follows:

18 A. On or about May 12, 1995, R.B., then only 38
19 years old, presented himself at the Simi Valley Hospital
20 Emergency Department with complaints of radiating left
21 shoulder pain. R.B. was in full cardiac arrest. There, R.B.
22 died of severe triple vessel coronary artery disease, causing
23 cardiac arrhythmia and an early myocardial infarction.

24 B. On or about May 11, 1995, R.B. had been
25

26 1. All patient references in this pleading shall be by
27 initials only. The true names of the patients shall be disclosed
 to respondent upon his timely written request for discovery
 pursuant to Government Code section 11507.6.

1 examined by respondent at respondent's medical office.
2 Respondent had been treating R.B. on an intermittent basis
3 during the preceding five years.

4 C. On or about May 11, 1995, respondent took a
5 patient history and recorded, "38 year old male with episodes
6 of hyperventilation, anxiety, lightheadedness, pressure
7 sensation in the chest for 3 days, episodes last 1 hour and
8 tend to occur in the morning prior to breakfast." R.B. stated
9 that he smoked approximately one pack of cigarettes each day
10 and had been doing so for the preceding 17 years. Respondent
11 recorded that R.B.'s blood pressure was 148/110 and that his
12 skin was "cool and clammy." Respondent examined R.B.'s lungs
13 and found "mild scattered expiratory wheezes."

14 D. Respondent diagnosed R.B. as having reactive
15 hypoglycemia (abnormally small concentration of glucose in the
16 circulating blood) and anxiety. Respondent recommended that
17 R.B. have three meals a day, a bedtime snack, reduce or
18 discontinue alcohol. He prescribed R.B. Xanax .5 mg for
19 anxiety, and recommended he return as needed with a recheck of
20 blood pressure in one to two weeks.

21 E. The following acts of respondent during his
22 care, treatment and management of R.B., singularly and
23 collectivley, constituted an extreme departure from the
24 standard of care:

25 (1) Failing to give a patient with multiple
26 risk factors for ischemic heart disease, including complaints
27 of chest pain, an electrocardiogram or other diagnostic tests

1 to determine the condition of the patient's heart.

2 (2) Making a diagnosis of reactive
3 hypoglycemia without adequate or sufficient corroboration.

4 (3) Failing to do a patient history and
5 physical commensurate with the patient's complaints.

6 **SECOND CAUSE FOR DISCIPLINE**

7 (Repeated Negligent Acts)

8 5. Respondent James S. Novick, M.D. is subject to
9 disciplinary action under section 2234, subdivision (c), of the
10 Code in that respondent committed repeated negligent acts in the
11 care, treatment and management of patient R.B. The circumstances
12 are as follows:

13 A. Complainant refers to and, by this reference
14 incorporates herein as though fully set forth, the allegations
15 contained in paragraph 4, subparagraphs A through E, inclusive,
16 above.

17 **THIRD CAUSE FOR DISCIPLINE**

18 (Incompetence)

19 6. Respondent James S. Novick, M.D. is subject to
20 disciplinary action under section 2234, subdivision (d), of the
21 Code in that respondent was incompetent in that he demonstrated the
22 inability to carry out the duties and responsibilities of his
23 profession in the care, treatment and management of patient R.B.
24 The circumstances are as follows:

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27 ///

1 A. Complainant refers to and, by this reference
2 incorporates herein as though fully set forth, the allegations
3 contained in paragraph 4, subparagraphs A and B, inclusive,
4 above.

5 **FOURTH CAUSE FOR DISCIPLINE**

6 (Criminal Conviction)

7 7. Respondent James S. Novick, M.D. is subject to
8 disciplinary action under section 2236 of the Code in that
9 respondent has sustained a conviction for an offense substantially
10 related to the duties, qualifications, and functions of a physician
11 and surgeon. The circumstances are as follows:

12 A. On or about August 29, 1993, in Glendale,
13 California, respondent was arrested for suspicion of driving
14 under the influence of alcohol or drugs or both.

15 B. On or about September 10, 1993, a misdemeanor
16 complaint, in the matter entitled *People of the State of*
17 *California v. James Stephen Novick*, Los Angeles County
18 Municipal Court, Glendale Judicial District, Case No. 93MO5742,
19 was filed against respondent, charging respondent with driving
20 under the influence of alcohol or drugs or both and refusing
21 to submit to a chemical test, in violation of Vehicle Code
22 section 23152, subdivision (a).

23 C. On or about September 15, 1993, respondent
24 entered a plea of guilty to the charged offense and was
25 sentenced.

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1 **FIFTH CAUSE FOR DISCIPLINE**

2 (Self Use Of Dangerous Drugs)

3 8. Respondent James S. Novick, M.D. is subject to
4 disciplinary action under section 2239 of the Code in that
5 respondent used dangerous drugs to the extent, or in such a manner
6 as to be dangerous or injurious to himself, or to another person or
7 to the public, or to the extent that his ability practice medicine
8 safely was impaired. The circumstances are as follows:

9 A. Complainant refers to and, by this reference
10 incorporates herein as though fully set forth, the allegations
11 contained in paragraph 7, subparagraphs A through C, inclusive,
12 above.

13 B. Respondent admits that he spent much of 1997 in
14 a rehabilitation program in Chicago. Illinois for alcoholism
15 and is currently under a doctor's care.

16 C. Respondent admits that he is disabled due to
17 alcoholism and not able to practice medicine.

18 **PRAYER**

19 **WHEREFORE**, the complainant requests that a hearing be
20 held on the matters herein alleged, and that following the hearing,
21 the Division issue a decision:


22 1. Revoking or suspending Physician and Surgeon's
23 Certificate Number C36874, heretofore issued to respondent James S.
24 Novick, M.D.;

25 2. Revoking, suspending or denying approval of
26 respondent's authority to supervise physician's assistants,
27 pursuant to section 3527 of the Code;

3. Ordering respondent to pay the Division the reasonable costs of the investigation and enforcement of this case and, if placed on probation, the costs of probation monitoring;

4. Taking such other and further action as the Division
deems necessary and proper.

DATED: November 6, 1997.



Ron Joseph
Executive Director
Medical Board of California
Department of Consumer Affairs
State of California

Complainant